

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Avi Springer	Team: Team # 1	CCRB Case #: 200305646	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/19/2002 12:00 AM, Tuesday, 05/06/2003 9:30 AM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 11/6/2004	EO SOL 11/6/2004	
Date/Time CV Reported Mon, 07/21/2003 8:25 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/24/2003 2:54 PM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
<b>Witness(es)</b>	<b>Home Address</b>				
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. LT Brian McGinn	00000	910284	B/S-END		
<b>Officer(s)</b>	<b>Allegation</b>			<b>Investigator Recommendation</b>	
A.LT Brian McGinn	Abuse: Lieutenant Brian McGinn threatened to notify Administration for Children's Services.				
B.LT Brian McGinn	Abuse: Lieutenant Brian McGinn authorized the entry and search of § 87(2)(b)				

### Synopsis

On May 6, 2003, officers from the Brooklyn South East Narcotics Division, acting under the supervision of Lieutenant Brian McGinn, executed a search warrant at the apartment of the complainant, § 87(2)(b) (*Allegation A: premises entered and searched*). During the incident, § 87(2)(b) was arrested for § 87(2)(b). § 87(2)(b) alleges that Lieutenant McGinn threatened that he would advise the Bureau of Child Welfare to remove § 87(2)(b)'s child from his home if any guns were found in the apartment (*Allegation B: threat to notify ACS*).

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old black male who works periodically cleaning up oil spills, filed a complaint with the Internal Affairs Bureau on July 21, 2002. In this complaint, § 87(2)(b) stated that officers had executed search warrants at his home twice in the past year; § 87(2)(g)

In his interview on August 1, 2003 (enc. 5A-D), § 87(2)(b) stated that on May 6, 2003 at approximately 9:30 AM, he was washing dishes in his kitchen. His wife, § 87(2)(b) was in the bedroom, feeding their baby, who was a few months old. Suddenly, plainclothes officers forcefully opened the door and entered the apartment with their guns drawn. § 87(2)(b) recognized the officer supervising the warrant execution, an older-looking white male (Lieutenant McGinn), as the same officer who had supervised the November 19, 2002 warrant execution. While most of the officers were the same ones who had entered his apartment in November, a couple were different. § 87(2)(b) was placed against the wall of his kitchen, handcuffed, and then brought into the living room, where he was told to lie on the floor. § 87(2)(b) could not describe the officer who handcuffed him. § 87(2)(b)'s wife was allowed to remain in the bedroom, where the officers asked her questions about guns.

The officers stated that they had a search warrant from the supreme court because they had been informed that § 87(2)(b) was selling guns. Again, they searched the apartment, but not as thoroughly as they had in November. This time, no dogs were brought into the apartment; the officers simply looked inside drawers and in the baby's crib. During the search, Lieutenant McGinn stated that, if the officers found any guns, he would advise BCW to remove § 87(2)(b)'s baby from his home. § 87(2)(b) stated that the officers did not make any other threats. Although they found no contraband in the apartment itself, when the officers searched § 87(2)(b)'s pocket, they found "some weed." Again, § 87(2)(b) was arrested for § 87(2)(b), and brought to the 70<sup>th</sup> precinct. His wife was not arrested.

§ 87(2)(b) was asked to explain the long interval between the incident dates and the date he made his complaint. He stated that he had waited to report the incidents for some time because he did not wish for the investigation to commence until he was ready to move out of the 70<sup>th</sup> precinct, where he feared officers would retaliate against him. At the time of the interview in August, § 87(2)(b) stated that he and his wife were in the process of looking for a place to move. § 87(2)(b)

## Results of Investigation

### Attempts to Interview Civilian Witness:

The investigator attempted to interview § 87(2)(b) on November 19 and December 2, 2003. However, § 87(2)(b) missed both appointments without calling to cancel.

### Officer Statement:

Lieutenant Brian McGinn, who is currently assigned to the 20<sup>th</sup> precinct, was interviewed on December 15, 2003 (enc. 6A-B). On May 6, 2003, Lieutenant McGinn performed day tour for Narcotics Borough Brooklyn South. He was the assigned supervisor for the execution of a search warrant at § 87(2)(b). He was in plainclothes.

Lieutenant McGinn stated that he had no independent recollection of the search warrant execution. Based upon the tactical plan for the warrant execution, which Lieutenant McGinn referred to during the interview, his own team performed the entry into the apartment. On that day, Sergeant Bruen, Detective Lee, Detective Strumpf, Detective Ward, Detective McGinn, Detective Fannizzi, and Detective Tacconi, were on the entry team, while Detectives Lombardi and Rabah performed exterior security. Lieutenant McGinn stated that he could not recall how many individuals were inside the apartment, where in the apartment they were located, or by whom or how these individuals were secured.

Lieutenant McGinn stated that he could not recall whether any contraband was recovered during the search or whether any arrests were made, noting that, because he had switched commands, he did not have access to his DAR from the incident date.

Lieutenant McGinn stated that he could not recall any conversation he or any other officer may have had with the occupants of the apartment during the warrant execution. When informed that an officer allegedly threatened that BCW would be notified if any guns were found in the apartment, Lieutenant McGinn stated that, while he did not recall any such statement being made, it would have been a legitimate statement of fact, not an abusive threat. He noted that, anytime officers recover firearms from an apartment, they are required to notify BCW of the potential threat to any children living in the apartment.

### Police Department Documents:

Search Warrant § 87(2)(b) (enc. 7A-D), obtained by Detective Timothy Lee, was signed on § 87(2)(b), by Supreme Court Justice § 87(2)(b). The warrant entitled officers to enter and search § 87(2)(b) without prior notice of purpose or authority because there was probable cause to believe that controlled substances and related paraphernalia would be found inside.

The tactical plan for the warrant (enc. 7E-G) identifies Lieutenant McGinn as the ranking officer in charge for the warrant and Sergeant Bruen as the secondary supervisor.

§ 87(2)(b)'s arrest report (enc. 8A) and property voucher (enc. 8B) from the incident indicates that he was arrested for § 87(2)(a) 160.50.

### Officer Identification:

Lieutenant McGinn was identified as the subject officer in the entry and search of the apartment since the tactical plan identified him as the ranking officer in charge for the warrant execution. He was identified as the subject officer in the threat to notify as well since § 87(2)(b) described the officer who threatened to arrest his wife as an older white male who was giving orders to the other officers on the scene. § 87(2)(b) stated that this officer was also present and seemed to be the supervisor on the scene during the November 12, 2002 incident. The tactical plan from the November 12 search warrant confirms that Lieutenant McGinn was also the ranking officer in charge during that incident. The secondary supervisors for the two warrants

were different officers (Sergeant Seychell on November 19 and Sergeant Bruen on May 6), § 87(2)(g) [REDACTED]

Civilian Record of Arrests and Convictions:

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Officer History:

Lieutenant McGinn has been a member of the New York City Police Department since January 26, 2003. He has six prior complaints on his CCRB history. In case number 6394104, Lieutenant McGinn was substantiated for a force allegation made in 1994; there is no record of the NYPD disposition for this case. (enc. 2)

**Conclusions and Recommendations**

*Allegation A* is that officers acting under the authority of Lieutenant McGinn entered and searched § 87(2)(b) [REDACTED] § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

*Allegation B* is that Lieutenant McGinn threatened that if guns were found during the execution of the search warrant, he would advise the Bureau for Child Welfare to remove § 87(2)(b) [REDACTED]'s child from his home. Lieutenant McGinn did not recall making this threat, but noted that it would have been a statement of fact since when a gun is found in an apartment where a child lives, officers are required to notify the proper authorities of the danger to the child's safety. Patrol Guide Procedure 215-03 (enc. 1A-K) states that the police must request that ACS remove children from households in which they suffer from abuse, neglect, or maltreatment. The procedure defines a maltreated child as "a child under the age of eighteen years of age who is in residential care and whose custodian impairs, or places in imminent danger of becoming impaired, the child's physical, mental or emotional condition." § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: